

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.335/2015
CMP No.521/2015

Date of Order:25.08.2015

Mohammad Amin Mir **Vs.** University of Kashmir &
ors.

Coram:

**Hon'ble Mr. Justice Mohammad Yaqoob
Mir, Judge**

Appearing Counsel:

For the petitioner(s) : Mr. Altaf Haqani, Adv
For the respondent(s): Mr. J.A. Kawoosa, Adv

Oral

01. Keeping an employee under suspension indefinitely gives rise to so many situations. Suspension essentially has to be transitory i.e. temporary in nature and must perforce be of short duration; its extension has to be decided on sound reasoning so that it may not operate as punishment before actually delinquent official is punished, procrastination is impermissible.
02. Petitioner an employee of the University was transferred and posted as Sr. Assistant in the Examination (Accounts) vide order dated 11.07.2012. Dy. Registrar, (Accounts) on 10.01.2013 had intimated that petitioner had presented a cheque bearing no.1228341 dated 22.08.2012 to the J&K Bank Nandpora-Hazratbal

for an amount of Rs. 11,158/-for encashment which was prepared fraudulently. Bank employees got suspicious about him, while making the enquiry, he took to his heels but CCTV footage of the Bank verified that he was involved.

Vice Chancellor had constituted a Committee for looking into the matter i.e. regarding the "**Attempt to withdrawal of fraudulent cheque**" on 26th October, 2012. Prior thereto on 11th October, 2012 he along with his two associates were placed under suspension and finally show cause notice was issued to the petitioner on 19th June, 2014 where under it has been made clear that Enquiry Committee investigated the matter thoroughly and has made the following recommendations:

- *To forfeit his three annual increments from the date of his suspension;*
- *To defer prospective promotion by two years from the date he becomes eligible for it;*
- *To transfer him to any of the Satellite/Off-site Campuses of the University; and*
- *Disassociate him from any job related to finance and accountancy.*

03. The said recommendations were approved by the Vice Chancellor, as a result whereof, petitioner was served a show cause notice about proposed punishment. In response whereof he has submitted a detailed reply on 24.06.2014 but till date no final decision has been taken. Petitioner noticing the prolongation in the process of disciplinary proceedings has filed the instant petition praying for the following reliefs:-

“a) A writ, order or direction including one in the nature of Certiorari, quashing the impugned order of suspension dated 11.10.2012 and the punishment approved vide show cause notice dated 19.06.2014 as also the enquiry proceedings as held by the respondents against the petitioner.

b) A writ, order or direction including one in the nature of Mandamus commanding upon the respondents to re-instate the petitioner and grant him all the benefits of regularity of service including pay and grade etc.

c) A writ, order or direction including one in the nature of prohibition commanding upon the respondents not to give effect to the punishment approved by the Vice Chancellor as is reflected by the show cause notice dated 19.06.2014.”

04. One of the relief as prayed for is that the respondents shall be commanded not to give

effect to the punishment approved by the Vice Chancellor as is reflected in the show cause notice dated 19.06.2014; such relief is premature cannot be granted as the authority had to take final decision on the basis of reply filed to the show cause notice. Proposed punishment prior to the show cause notice dated 19.06.2014 too is premature because that is a matter yet to be decided finally by the authority concerned.

05. According to the learned counsel, continuous suspension is unwarranted; authorities have slept over the matter unnecessarily.
06. Vide order dated 26th February, 2015 respondents were directed to review the order of suspension having regard to the Rule 31 (Government Instruction-2), J&K Civil Services (Classification, Control and Appeal) Rules 1956. In compliance whereof respondent-authorities have considered the re-instatement of the petitioner but have refused his re-instatement by stating that he has been further found involved in preparation of some more cheques fraudulently with the inherent intention of encashing them during the period of his posting in the University Examination (Accounts). His nefarious designs and activities are under investigation, therefore, University

maintains status-quo vis-a-vis the position of his suspension.

07. Learned counsel for the petitioner while vehemently relying on the various judgments would submit that the continuous suspension is not an alternative that too when the authorities are showing indolence in taking final decision.
08. Confronted with the afore-stated position, learned counsel Mr. Kawoosa would submit that the University authority will take final decision within a short span of time, therefore, this petition does not survive for any further consideration.
09. While considering the rival submissions, what would emerge is that various contentions have been raised regarding defective disciplinary proceedings but all such submissions are open to be dealt with at an appropriate time. At this stage, respondent-authorities are required to take final decision on the show cause notice proposing punishment that too after considering the response to the show cause notice as filed by the petitioner.
10. Re-instatement of the petitioner has to be an unavoidable conclusion, even if authorities impose the proposed punishment. In addition there to, the services of the petitioner even during the period of

suspension have been utilized even he has been deputed for election duty as well. Suspension from the year 2012 till date cannot be allowed to continue any further unless any fresh enquiry is initiated against the petitioner.

11. Viewed thus, this petition is disposed of with a direction to the respondent-authorities to consider favorably the case of the petitioner for re-instatement with immediate effect and to take a final decision vis-a-vis proposed punishment in accordance with rules, after taking into consideration the reply filed by the delinquent official. The exercise be undertaken and completed within a period of three weeks from the date copy of the order is served upon them.
12. Disposed of as above along-with connected CMPs.
13. Copy of this judgment be furnished to Mr. Kawoosa so as to enable him to ensure compliance.

(Mohammad Yaqoob Mir)
Judge

Srinagar
25.08.2015
"Shameem Hamid"